

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1855 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

A R TRIVEDI

Versus

NATIONAL TEXTILE CORP (UP) LTD

Appearance:

MR NAGESH SOOD for Petitioner
MR SHUKLA for Respondent No. 2
None present for other respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/09/1999

ORAL JUDGEMENT

#. The challenge has been made by the petitioner to the order of the respondent No.2 dated 4/5-3-86 under which the services of the petitioner were brought to an end on the ground as same are being found unsatisfactory.

#. The learned counsel for the petitioner contended that the petitioner was in the service of the respondent No.1 and in fact it was a case of transfer and not a fresh appointment with the respondent No.2. Where his services were not found satisfactory only option open to the respondent No.2 is to send him back to his parent employer, the respondent No.1. Carrying this contention further he submits that there the petitioner was holding the post of Manager (Projects) and his lien was continued on that post. Second contention raised that his services were put at the disposal of respondent No.3 by the respondent No.2 and the General Manager of the respondent No.3 has recommended for confirmation of the petitioner in services, which shows that his performance was satisfactory. Lastly it is contended that even if it is taken to be a case of appointment of petitioner as a fresh recruitment. To continue him on probation for more than 4 years is arbitrary and unjustified. Lastly it is submitted that from the documents of the respondent No.2 it is a clear case where on one fine morning a plot has been made against the petitioner to discharge him from the services.

#. Shri Shukla, learned counsel for the respondent No.2 contended that the petitioner's work was not satisfactory and the employer has all right to discharge a probationer from the services. It is a simpliciter discharge of a probationer. It is an innocuous order and does not cast any stigma.

#. Referring to two documents, which have been filed by the petitioner himself with the Special Civil Application, Shri Shukla contended that the respondent No.2 has given sufficient opportunity to the petitioner to improve his work as a Manager (Production) but when despite of this opportunity he has not improved his work the employer had no option but to terminate the services of the petitioner. In support of his contention Shri Shukla placed reliance on the decision of the apex court in the case of Kedar Nath Bahl Vs. The State of Punjab and Ors. reported in AIR 1972 SC 873.

#. In addition to the reply to this Special Civil Application, an additional affidavit is also filed by the respondent No.2 in which a preliminary objection is raised that in view of the subsequent development which are taken place during the pendency of the Special Civil Application, proceedings of the Special Civil Application may be stayed. Reference in this respect is made to the proceedings before B.I.F.R. Pending those proceedings in

view of the provisions of 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, what Shri Shukla urges, no relief can be granted to the petitioner.

#. I do not find any substance in this objection of the learned counsel for the respondent No.2. This provision may have some relevance where the question does arise for the recovery of some money from the respondent No.2. Here the petitioner challenges the order of the respondent No.2 under which his services were terminated. It is not the stage where the recovery proceedings has to be taken against the respondent No.2, even if the relief is granted by this court to the petitioner as prayed for. If it is a case of that nature, there may be some semblance of justification in this preliminary objection raised by the learned counsel for the respondent No.2 but that stage has yet to reach. Only where in case ultimately this court accepts this writ petition, set asides the order of the termination of the service of the petitioner made by the respondent No.2 and directions are given to respondent No.2 to pay back wages to the petitioner and the petitioner initiates proceedings for recovery of the amount of back wages at that stage those proceedings may be stayed by the court.

#. Having heard the learned counsel for the parties, I am satisfied that the order passed discharging the petitioner from services by the respondent No.2 is perfectly legal and justified. The order of the respondent No.2 dated 4/5-3-86 is an order of simpliciter discharge of a probationer from services. The appointment order of the petitioner is there on the record as Annexure-D at page No.33 dated 27/5/82. The petitioner was given appointment on the probation for a period of 6 months. There is a condition in the appointment order that the probation period can be extended at the discretion of the Corporation. The probation period shall stand automatically extended if the petitioner is not confirmed in service. It is not in dispute that an order of confirmation in writing is not issued to him. Though initially the petitioner was placed on probation for 6 months but he has to continue as a probationer so long he is not confirmed in service by the respondent No.2. Condition of automatic confirmation in service is not there in the order of appointment of the petitioner. The contention of the petitioner that it is not a case of an appointment as probationer but is a case of transfer from one unit to another unit has no substance and merits. If we go by the record of the case, I find that the petitioner himself wanted to come to Gujarat from U.P. It comes out

from one of the documents that he himself stated that he may be taken as fresh appointee in any of the units at Gujarat, as being a Gujarati he is facing some problems and difficulties in U.P. to stand with the labourers as well as colleagues and the persons working in the office of the respondent No.1. It is true that the probation period was continued for a period about 4 years, but it is equally true that the petitioner's services found unsatisfactory and even after giving him sufficient opportunity he has not improved the same. The respondent No.2 has not committed any error in terminating the services of the petitioner under the impugned order. From the document Annexure-G at page No.38 dated 8/10/85 I find that despite of giving sufficient opportunities, the petitioner has not improved his work. Contrary to it it is found that he has become irregular in his duties and has not made any serious efforts for upliftment of the production. These are very serious things as the petitioner was holding the post of Manager (Production).

#. Taking into consideration the totality of the facts of the case and two documents produced in Special Civil Application by the petitioner himself it is a case where the petitioner's services were brought to an end because of his unsatisfactory work. It is a simpliciter discharge of probationer. It cannot be taken to be a case of termination of service of probationer by way of penalty or casting any stigma to the petitioner.

In the result, the Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

(S.K.Keshote, J.)

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